

86H7ORU1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

07 CR 124 (WHP)

EMMANUEL ORUCHE and JOSEPH
OLUIGBO,

Defendants.

New York, N.Y.
June 17, 2008
9:45 a.m.

Before:

HON. WILLIAM H. PAULEY III,

District Judge

APPEARANCES

MICHAEL J. GARCIA
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Southern District of New York
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NEUMAN LEVERETT III

86HTORU4

Rigby - direct

1 records and I testify to those records.

2 Q. In your job as a records custodian are you familiar with
3 the way Western Union keeps records?

4 A. Yes.

5 Q. How does Western Union keep records?

6 A. The records are kept by capturing the information input by
7 the Western Union agents when they send a money transfer.

8 Q. How are these records kept?

9 A. They're kept in a computer.

10 Q. I'm passing you what's been previously marked for
11 identification as Government Exhibits 32.1 and 32.2. Can you
12 take a look at those documents and tell me if you recognize
13 them?

14 A. Yes, I recognize them. These are Western Union money
15 transfers.

16 Q. And how do you recognize them?

17 A. I recognize the format, and I of course reviewed the
18 records that we provided.

19 Q. Are those accurate copies of the records as they exist in
20 the Western Union systems?

21 A. Yes, sir, they are.

22 MR. ROSENSAFT: Your Honor, the government would offer
23 Government Exhibits 32.1 and 32.2 into evidence.

24 THE COURT: Any objection?

25 MR. LEVERETT: No, your Honor.

86HTORU4

Rigby - direct

1 MS. DOLAN: No, your Honor.

2 THE COURT: All right. Government Exhibits 32.1 and
3 32.2 are received in evidence.

4 (Government's Exhibit 32.1 and 32.2 received in
5 evidence)

6 Q. Mr. Rigby, I want to take you through these records for a
7 little bit. If you could first turn to Government
8 Exhibit 32.1.

9 A. Okay.

10 Q. And I see there are two pages in this exhibit. Can you
11 identify what the first and second pages are?

12 A. The first page is our money transfer record that is
13 captured and retained as a computer image. The second page is
14 the check that is processed in payment of the money transfer.
15 We print a check, have the receiver endorse the check, and
16 usually they will cash the check on the spot.

17 Q. Looking at the top of Government Exhibit 32.1, I want to
18 direct your attention to the upper top left which says payee
19 Rebecca Fomum-Tibah. What does that indicate?

20 A. That's the intended -- the receiver of this transaction was
21 Rebecca Fomum-Tibah. It's the payee's name.

22 Q. And then right across from that I see it has sender Nicole
23 Oruche? What does that indicate?

24 A. That indicates the sender is Nicole Oruche.

25 Q. How does this information get put into your records?

86HTORU4

Rigby - direct

1 A. Our sending agent keyed that information in.

2 Q. And when you say sending agent, what do you mean?

3 A. Well, we have agents in the country. We contract with
4 local businesses and food chains and check cashers and they
5 provide money transfer service to the public on behalf of
6 Western Union.

7 (Continued on next page)

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86H7ORU5

Rigby - direct

1 BY MR. ROSENSAFT:

2 Q. Directing your attention to the fourth line, could you read
3 that?

4 A. Paying city, Chicago.

5 Q. What does that indicate?

6 A. That's where the transfer was paid out.

7 Q. Down a little bit more, where there is an open parentheses
8 and 300, on Government Exhibit 32.1, what does that indicate?

9 A. That's the amount that was sent.

10 Q. Finally, if I could direct your attention to the middle of
11 the page, I see a bunch of codes. I want to take you through
12 them. The line that starts REC equals 292, can you tell us
13 what that indicates on the form?

14 A. Yes. REC is abbreviation for record. That means that's
15 when it was sent. And the 292 is the operator number at the
16 location where the transfer was sent.

17 Q. Where does this operator number come from?

18 A. It's assigned to the person at the Western Union agent.

19 Q. Do you know what operator corresponds to the operator
20 number 292?

21 A. Yes, I've got some information.

22 Q. Actually if you could look at the exhibits in front of you.
23 I guess I will direct your attention to Government Exhibit 32.2
24 on the last page.

25 A. OK. Thank you. Yes, 292 belongs to Maria Tolentino.

86H7ORU5

Rigby - direct

1 MR. STOLAR: Spell that.

2 THE WITNESS: T-O-L-E-N-T-I-N-O.

3 Q. Now, referring back to Government Exhibit 32.1, after REC
4 equals 292, I see more information there. Can you tell us what
5 that information indicates?

6 A. Yes. There is the date, July 27, 2006, and the time.

7 Q. And then below that, in that line below, what information
8 is reflected in the line below in Government Exhibit 32.1 which
9 starts?

10 A. The line below that starts out paying. That's the date and
11 time that the transaction was paid out.

12 Q. Now, you have referenced the operator number 292. What is
13 this operator number? What is an operator number?

14 A. That's a number that's assigned to the employee at the
15 Western Union location.

16 Q. Does the employee have to provide any other information
17 besides the operator number when they input this information?

18 A. There is a password that goes along with it.

19 Q. Finally, Government Exhibit 32.1, I want to direct your
20 attention to the bottom of that exhibit which starts Nicole
21 Oruche. Can you tell us what's indicated in that line?

22 A. Yes, that is the information the center provided us, the
23 name of Nicole Oruche, the address, city, state, zip.

24 Q. What is the address?

25 A. The address, 3682 White Plains Road, Bronx, New York.

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Rigby - direct

1 Q. Now if I could take you to Government Exhibit 32.2. What
2 is this document?

3 A. This is also a Western Union money transfer document.

4 Q. If you could again tell me at the top of the page, is the
5 payee and sender information indicated?

6 A. Yes, it is, payee Rebecca Fomum, sender Nicole Oruche.

7 Q. Again on this document, where the Western union money was
8 sent, is that indicated?

9 A. Yes, it was sent to Chicago.

10 Q. What about the amount, is that indicated on this record?

11 A. Yes, the amount of \$2,000.

12 Q. Now, I want to direct your attention again to these codes
13 that are in the middle of the page. REC equals 913. Again, if
14 you could explain what that indicates.

15 A. Of course. REC means the date and time this was recorded.
16 The 913 is an operator number.

17 Q. And do you know what name that operator number corresponds
18 to?

19 A. Yes, 245 operator number corresponds to Joseph Oluigbo.

20 Q. And then after the operator number, what information is
21 included in that line of Government Exhibit 32.2?

22 A. The date it was sent, July 28, '06.

23 Q. And is the time indicated?

24 A. And the time 11:22 a.m. That would be Eastern Time. All
25 of our times are Eastern.

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Rigby - direct

1 Q. Finally, at the bottom of the page, where it starts Nicole
2 Oruche there is a line. Can you tell us what's indicated in
3 that line?

4 A. Yes. Nicole Oruche, that's in the center field, providing
5 an address of 3678 White Plains road in Bronx, New York.

6 Q. And the sender name Nicole Oruche, who actually enters this
7 into the Western Union records?

8 A. The Western Union agent, operator, at the Western Union
9 location.

10 Q. Is that the same operator that corresponds to the number
11 that we just went over, 913?

12 A. Yes.

13 Q. Turning to the second, third pages of Government Exhibit
14 32.2, can you tell us what those documents are?

15 A. Those are checks that were written out to pay out this
16 transaction. We always write out a check, and then we have it
17 endorsed and usually cash the check for the recipient on the
18 spot.

19 Q. And why are there two checks in this instance?

20 A. The checks are only good for \$1,000 or less, so this was
21 2,000, so that takes two checks to pay out this transaction.

22 MR. ROSENSAFT: Your Honor, may I have one moment?

23 THE COURT: Yes.

24 Q. Mr. Rigby, just one more question, and I apologize if I
25 asked this before. But on the second transfer, Government

86HTORU6

Arthurton - direct

1 A. By his voice and being told that he is utilizing the phone
2 when we were conducting surveillance on it.

3 Q. And Joseph Oluigbo, who is that?

4 A. Joseph Oluigbo is his business partner, if you will, that
5 works for him in his Nicobi Health Care store.

6 MR. CERESNEY: Objection, your Honor, the
7 characterization of business partner.

8 THE COURT: I'll sustain that objection and strike
9 that portion of Special Agent Arthurton's testimony.

10 Members of the jury, you're directed to disregard that
11 characterization.

12 Q. How did you identify Joseph Oluigbo as a participant in
13 this call?

14 A. Through his voice, many of the phone calls we have with
15 Joseph. In fact he may have been one of the number one phone
16 calls that we received from Oruche. In addition, Joseph worked
17 at the Nicobi Health Care store where he took care of business
18 in terms of whatever needed to be taken care of, bills, et
19 cetera, for the business for Emmanuel Oruche.

20 Q. Did you conduct surveillance of Joseph Oluigbo?

21 A. Yes, many times.

22 Q. How often did you see him during the investigation?

23 A. Depending upon who we're following on that particular day,
24 we followed Joseph usually from his house to Nicobi Health Care
to wherever he goes during the day. But mainly he stays in the

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86IAAORU2

Arthurton - Cross

1 midmorning recess now and maybe the government can help us out
2 now.

3 THE COURT: Why don't you move to something else for a
4 short time then we will take our recess, Mr. Stolar.

5 MR. STOLAR: Okay.

6 Q. There are roughly four months of wiretapping on three
7 separate phones; is that correct?

8 A. Correct.

9 Q. How many phone calls were intercepted over the course of
10 the entire surveillance period, the wiretap period?

11 A. On all three phones?

12 Q. On all three phones.

13 A. Thousands.

14 Q. Thousands. Did you ever count them up?

15 A. I'm sure I did. I don't know -- I think maybe three
16 thousand or more.

17 Q. More than three thousand?

18 A. I'm not sure.

19 Q. Five thousand?

20 MR. ROSENSAFT: Objection, your Honor.

21 THE COURT: Sustained.

22 Q. Now, some of those calls contained discussions about
23 business, did they not?

24 MR. ROSENSAFT: Objection.

THE COURT: Sustained.

86I70RU3

Arthurton - cross

1 A. Is it a lot of resources?

2 Q. Yes. Is that a lot of resources?

3 A. It depends on what the goal is, sir.

4 Q. I'm not asking you about the goal.

5 A. Right.

6 Q. I'm just asking you is that a lot of government resources,
7 in your view?

8 A. We could always have more, so in some sense it's enough and
9 sometimes it's not enough. I mean it's all relative, sir.

10 Q. You said there were about 14 agents that were intimately
11 involved in this investigation, right?

12 A. Approximately.

13 Q. Now, you knew during the course of this investigation where
14 Mr. Oluigbo lived, didn't you?

15 A. Yes, I did.

16 Q. You knew where he worked, right?

17 A. Yes, I did.

18 Q. You knew his phone numbers, didn't you?

19 A. Yes, we did.

20 Q. You knew what he looked like, didn't you?

21 A. That is correct.

22 Q. In fact you said you surveilled him many times, didn't you?

23 A. That is correct.

24 Q. And isn't it true during the whole time of this
investigation you never personally saw Mr. Oluigbo with drugs,

86I70RU3

Arthurton - cross

1 correct?

2 A. Personally, I've never seen him with drugs.

3 Q. You never surveilled Mr. Oluigbo involved in a drug
4 transaction, correct?

5 MR. ROSENSAFT: Objection.

6 THE COURT: Overruled.

7 A. Can you repeat the question?

8 Q. You never surveilled Mr. Oluigbo involved in a drug
9 transaction, correct, a sale of drugs?

10 A. Well, a drug transaction doesn't necessarily mean a sale,
11 sir.

12 Q. A sale of drugs.

13 A. A sale of drugs?

14 Q. Yes.

15 A. No.

16 Q. Or a purchase of drugs.

17 A. No.

18 Q. You never surveilled Mr. Oluigbo taking someone to the
19 airport, correct?

20 A. I personally did not, no.

21 Q. You never surveilled Mr. Oluigbo picking somebody up at the
22 airport, correct?

23 A. Not me personally, no.

24 Q. By the way, when -- strike that.

As part of your investigation, I think we have talked

86170RU3

Arthurton - cross

1 (In open court)

2 THE COURT: The objection is overruled. Put a
3 question to the witness.

4 BY MR. CERESNEY:

5 Q. Agent Arthurton, did you testify one phone he used for more
6 legitimate business, and one phone he used for dirty business,
7 and one phone dirty with people, and more people had more?

8 Did you testify to that in the grand jury?

9 A. That is correct.

10 Q. OK. Now, which phone did he use in your language for "more
11 legitimate business" of the three phones that you described?

12 A. At the time I think I was referring to the 646 phone.

13 Q. The 646 phone is the number you said he used for more
14 legitimate business, right?

15 A. That's what I just said.

16 Q. OK. By the way, have you examined the telephone calls that
17 are admitted into evidence, the government put before you, that
18 relate to Mr. Oluigbo? Have you examined those?

19 A. Have I examined the phone calls in evidence referring to
20 Mr. Oluigbo?

21 Q. Yes.

22 A. Yes, I have.

23 Q. And have you looked at the telephone numbers that Mr.
24 Oluigbo used in each of those calls with Mr. Oluigbo?

25 A. A good portion of 646.

86I7ORU3

Arthurton - cross

1 Q. Isn't it true that each and every call that was admitted
2 into evidence by the government at this trial involving Mr.
3 Oluigbo involved Mr. Oruche's 646 number?

4 A. I guess so. I'm not aware of all the calls, so if that's
5 true, then that's true.

6 Q. OK. Well, why don't we just look at -- do you want to take
7 a moment to look at them?

8 Just take one moment. Take your time. Look at -- I
9 think there is less than ten calls with Mr. Oluigbo. Tell me
10 whether all of those calls are Mr. Oruche's 646 number.

11 THE COURT: For the record, what exhibits have you
12 placed in front of the witness?

13 MR. CERESNEY: Yes, I apologize. I put in front of
14 him 41T-1 through 41T-17, only some of which involve Mr.
15 Oluigbo.

16 Q. Have you completed your review?

17 A. I have.

18 Q. And are all the calls involving Mr. Oluigbo, between Mr.
19 Oluigbo and Mr. Oruche, using Mr. Oruche's 646 number?

20 A. That is correct.

21 Q. OK. Now, there were I think a few calls that you looked
22 at, and I'm going to ask you to look at 41T-2, 41T-4. And
23 actually, your Honor, if we could just ask the jury just to
24 look in their binders.

THE COURT: Members of the jury, you can turn to the

86IAAORU6

Fomum-Tibah - Direct

1 THE COURT: Try to speak right into the microphone so
2 we can hear you.

3 A. No.

4 Q. When you say "earlier 2006" what do you mean?

5 A. I mean in the earlier part of 2006 about when the first
6 four months or five months -- first four months.

7 Q. How did you got your ticket to travel to Istanbul?

8 A. Was purchased -- well, Joe called me that morning when,
9 after Emmanuel left to confirm how my name was to appear on
10 the, how my name appears on the ID card that I would be using.
11 My ticket was bought Online.

12 Q. Who is Joe?

13 A. Joe is Manny's should I say right-hand man?
14

15 MR. CERESNEY: Objection.

16 THE COURT: Overruled.

17 Q. How would you describe your relationship between Joe and
18 Manny?

19 A. Very close.

20 Q. What do you mean by that?

21 A. They shared both personal and business information. Joe
22 will basically do a lot of the things that Manny asked him to
23 do.

24 Q. When did you first meet Joe?

25 A. About 2005.

86IAAORU6

Fomum-Tibah - Direct

1 Q. Do you know what Joe's last name is?

2 A. I must have seen it somewhere but we weren't on a last name
3 basis.

4 Q. How often did you see Joe since you first met him?

5 A. Every time I would go to New York.

6 Q. Could you look around the courtroom and tell me if you see
7 Joe in the courtroom?

8 A. Yes, I do.

9 Q. Can you describe where he is sitting, an article of
10 clothing that he is wearing?

11 A. Second row and second from my left, blue shirt, glasses.

12 THE COURT: All right. The record should reflect that
13 Ms. Fomum-Tibah has identified the defendant Joseph Oluigbo.

14 Q. So, you were speaking about a conversation that you had
15 with Joe on the phone about your ticket. What, specifically,
16 did you and he say about your ticket?

17 A. Not too much. After my name we discussed the flight
18 schedules that he was looking at.

19 Q. Then what happened?

20 A. Later on Manny picked me up from the house from his
21 apartment and I went down there and I took over the computer
22 and continued and I did the reservations for the hotel.

23 Q. Let me back you up a bit. When you say you "went down
24 there" what do you mean?

25 A. To the store.

86IAAORU6

Fomum-Tibah - Direct

- 1 Q. How did you get to the store?
2 A. Emmanuel picked me up from his apartment.
3 Q. This is the store you talked about earlier?
4 A. Yes, it is.
5 Q. What happened when you got to the store with Manny?
6 A. Joe was on the computer and I took over picking out which
7 hotels I would like to live in.
8 Q. Did you see what Joe was doing on the computer before you
9 took over?
10 A. He was looking at the hotels.
11 Q. Before your trip?
12 A. Yes.
13 Q. Did you find a reservation for the hotel?
14 A. Yes, I did.
15 Q. Did you pay for the hotel?
16 A. Yeah. First, Manny called to find out if my selection was
17 close enough to where his contacts in Istanbul, then he let me
18 use his credit card to pay.
19 Q. When you say your selection, the place you were going to
20 stay in Istanbul?
21 A. Yes.
22 Q. What happened next?
23 A. We finalized that. He gave me three thousand to give to
24 the people when I got to Istanbul. He gave me one thousand five
25 machine for myself, total of four thousand five hundred

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86IAAORU6

Fomum-Tibah - Direct

1 dollars.

2 Q. When you say "he"?

3 A. Emmanuel.

4 Q. Where did he give you this money?

5 A. At the store.

6 Q. Was Joe there when he gave you this money?

7 A. I don't remember. Joe was in the store but I don't
8 remember if he was standing close by.

9 Q. So after you were given this money by Emmanuel Oruche what
10 did you do next?

11 A. We talked some more. He told me not to discuss his
12 business with the people when I got there. And he took me to
13 the airport.

14 Q. What, if any, instructions did you receive about what to do
15 when you got to Istanbul?

16 A. Well, he said that when I got there they were going to give
17 me a phone that I could use to call him on and also the number,
18 that I would the number to contact Chuka who was the person he
19 was supposed to meet.

20 Q. And, again, when you say "he" you are referring to Emmanuel
21 Oruche?

22 A. Yes.

23 Q. Did you have any discussion with Emmanuel Oruche about how
24 you should act when you got to the airport?

25 A. Yes.

86IAAORU6

Fomum-Tibah - Direct

1 Q. What did you say and what did he say in those discussions?

2 A. Look presentable and just be myself.

3 Q. Who said that?

4 A. Emmanuel.

5 Q. Did you make it to Istanbul?

6 A. Yes, I did.

7 Q. What happened when you arrived in Istanbul?

8 A. I went to the transportation got a taxi and went to the
9 hotel.

10 Q. What did you do when you got to the hotel?

11 A. I called the number that he had given me.

12 Q. And again, did --

13 A. Emmanuel.

14 Q. What happened when you made this call?

15 A. And he asked what room I was in. I told him and he said
16 he'll be there.

17 Q. Please, try to make sure when you are going to say "he" you
18 are saying who you are referring to?

19 A. I called the number he had given me for Chuka and Chuka
20 said he would be there. So a few minutes later he came.

1 Q. What happened when Chuka arrived at your hotel?

2 A. I went down and I saw him. He came with another boy,
3 another man.

4 Q. What conversations, if any, did you have at that point with
Chuka?

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Fomum-Tibah - Direct

1 Q. What happened after you got through Customs?

2 A. I came out of the luggage claim and passed the last few
3 officers and Joe was standing where you have families and
4 friends wait for their loved ones or people they are expecting.

5 Q. Is this the same Joe you identified before?

6 A. Yes.

7 Q. What, if anything, did Joe say to you?

8 A. He welcomed me back and I asked for Manny and he said
9 somewhere around and we walked down a little and Manny joined
10 us.

11 Q. What happened to your bag?

12 A. Joe had it. Joe took my bag.

13 Q. You picked up your bag first? Who picked up the bag from
14 where the bags are let off from the airlines?

15 A. I did. He only took the bags from me when I came out.

16 Q. So then you walked out of the airport with Joe and Emmanuel
17 Oruche?

18 A. Yes.

19 Q. What happened next?

20 A. We got in the car and on my way to Istanbul I was put on
21 oxygen. I wasn't feeling good and we talked a little about
22 that. And Manny said you could not swallow, huh? And I said,
23 yes.

24 MR. ROSENSAFT: Would you like it read back?

THE COURT: Could you read back for Mr. Stolar the

86JTORU1

1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK
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3 UNITED STATES OF AMERICA,
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4 v.
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13 District Judge
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14 APPEARANCES
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16 United States Attorney for the
16 Southern District of New York
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17 MICHAEL ROSENSAFT
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17 VIRGINIA CHAVEZ ROMANO
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24 NEUMAN LEVERETT III
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86JTORU1 Fomum-Tibah - direct

- 1 corner, and shortly after Emmanuel joined us.
2 Q. Sorry, and?
3 A. Emmanuel joined us.
4 Q. And once Emmanuel met up with you, where did you go?
5 A. Proceeded to his car.
6 Q. What kind of car was it?
7 A. Cadillac SUV.
8 Q. What happened when you got in the car?
9 A. They both sat in front and I sat behind between the two of
10 them.
11 Q. When you say between the two of them, can you describe kind
12 of more specifically how the car was set up?
13 A. There's the driver's seat and the passenger seat, front
14 seat, and the back long seat, and I sat right in the middle.
15 Q. What happened on the way home or when you got in the car?
16 A. Well, we chitchatted a little, and on my way to Istanbul I
17 was put on oxygen, we talked about that a little bit. And he
18 asked you could not swallow, huh? And I said yes.
19 Q. When you say he asked you --
20 A. Emmanuel.
21 Q. Where was Emmanuel sitting when he asked you that?
22 A. On the passenger side.
23 Q. And you were in the back?
24 A. Yes.
25 Q. And where was Joe sitting?

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86JTORU1 Fomum-Tibah - direct

- 1 A. Driver's seat.
2 Q. What happened then?
3 A. We proceeded and we went to Emmanuel's apartment.
4 Q. What happened when you got to Emmanuel's apartment?
5 A. I went into the room and I removed the package from my bag
6 and give it to him, Emmanuel.
7 Q. And where was Joe when you gave when package to him?
8 A. In the living room.
9 Q. And did there come a time when you made a second trip to
10 Istanbul?
11 A. Yes.
12 Q. When was that, approximately?
13 A. About a month, a few weeks after the first trip.
14 Q. How did that come about?
15 A. The proceeds from the drugs that I brought the first time,
16 Emmanuel said he owed a lot of people that he owes, going to
17 use that to pay off some of the debts that he had and use the
18 other part to reinvest, that way more money to could come in.
19 One of the ways he was going to reinvest that was in
20 his friends Peter and Paul who would also bring drugs from
21 Istanbul. When Paul brought drugs Manny left those drugs in my
22 car, in my van. I was getting ready to pick up a client of
23 mine and looking over the car I saw the drugs, and as usual,
24 when I called him, he doesn't answer his phone right away. I
25 was also still very mad at him, things had not changed, you

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86JTORU1 Fomum-Tibah - direct

1 that trip because Paul just came back from Istanbul and I knew
2 he had drugs.

3 Q. Did you ever open the bag?

4 A. Yes, when I got to Ed.

5 Q. And you mentioned you called Ed, who is Ed?

6 A. Ed is Emmanuel's buyer.

7 Q. What happened when you called Ed?

8 A. Luckily Ed was -- or not luckily, he was just down the
9 street, and he told me to meet him at a restaurant down the
10 street. I told him I had something for him.

11 Q. Why did you call Ed?

12 A. I was really being -- when I first saw it in my car I
13 didn't like the fact that it was in my car, especially my
14 business van, and I wanted to be spiteful to Manny.

15 Q. What was your intention?

16 A. My intentions were to give it to Ed and take some money
17 from Ed.

18 Q. And keep the money?

19 A. Yes.

20 Q. So what happened after you called Ed?

21 A. He told me to meet him at a restaurant down the street.
22 And I did.

23 Q. What happened at that meeting?

24 A. Well, he was with another friend and he moved, he came to
25 the window, and I showed him what was there, he opened it, he

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611

86JTORU1 Fimam-Tibah - direct

1 went back and brought his -- the way to measure quantity.

2 Q. He brought something that could measure the amount of
3 drugs?

4 A. Yes.

5 Q. Then what happened?

6 A. He did that. He said he only had 14,000 because he wasn't
7 ready, and he gave me the 14,000. And he was trying to tell me
8 to pick up the rest later on. I was like he can just take care
9 of that with Emmanuel.

10 Q. Did you see how much the drugs weighed?

11 A. Yes.

12 Q. How much did they weigh?

13 A. About half a key.

14 Q. That's half a kilogram?

15 A. Yes.

16 Q. And when you say he gave you 14,000, he gave you \$14,000?

17 A. Yes.

18 Q. What specifically was said, what did Ed say specifically
19 after that?

20 A. He told me he only had 14,000 on him, and that I could meet
21 up with him later on to get the balance, because it was
22 supposed to be about 60,000, 62, actually.

23 Q. What was your response?

24 A. I was like it was okay, he could just take care of the
25 balance with Emmanuel.

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86JTORU1

Fomum-Tibah - direct

1 Q. What happened from there?

2 A. I continued to call Ed, Emmanuel continued to call Ed and
3 Ed's wife, and we did not get the right feedback.

4 Q. Did you ever -- how did the situation with Ed resolve
5 itself?

6 A. Well, it never really did, because after that I was making
7 a trip to go to Istanbul and make up for the balance of the
8 money. Joe was calling me, Paul was calling me, Emmanuel was
9 calling me. Joe told me Manny's car, that Paul had used the
10 rock to shoot Manny's car, that people were threatening him
11 that he is in so much debt. Those were the kinds of calls I
12 was getting on a regular basis.

13 Q. When you say Joe, are you referring to the same Joe you
14 were referring to yesterday?

15 A. Yes, sir.

16 Q. What specifically did he tell you?

17 A. Well, he started off by saying that I'm a good girl, that
18 naturally if I had done what I did something had to have pushed
19 me to that point, that he just wanted to talk and see how this
20 could be resolved because Manny was really having a lot of
21 trouble back there in New York.

22 Q. So what happened next?

23 A. I suggested after a while that I would make a trip to
24 Istanbul and see if I could -- the drugs that I bring could
25 make up for the balance. And at that point Manny was like he

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86JTORU1

Fomum-Tibah - direct

1 didn't have any money, he could not deal with that, he could
2 not afford to pay for another trip. So I said I would do it if
3 it was going to make the situation go away.

4 Q. Did you go back to Istanbul?

5 A. Yes, I did.

6 Q. And when was that, approximately?

7 A. A month and a few weeks after the first trip.

8 Q. And what preparations, if any, were made for that trip?

9 A. Not very much. Just the same number for Chuka where I was
10 to call.

11 Q. When you say the same number, how did you obtain that
12 number?

13 A. From Emmanuel.

14 Q. How was your ticket purchased for that trip?

15 A. I did that from a debit card.

16 Q. And why did you purchase the ticket this type?

17 A. At that point Emmanuel said he didn't have any money.

18 Q. Where did you fly from for your second trip?

19 A. New York.

20 Q. What happened when you got to Istanbul?

21 A. I went to the same hotel and I called Chuka.

22 Q. What happened after you met with Chuka?

23 A. He came over and we talked a little. Most of what he
24 wanted to talk about was the incident that happened back in
25 Michigan with the drugs that Paul had brought.

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96JTORU1

Fomum-Tibah - direct

1 Q. What did they say about that?

2 A. They wanted to know how that happened and why I did what I
3 did, and what the situation was when I was there before I got
4 to Istanbul.

5 Q. Did you have any conversations between you and Emmanuel
6 Oruche once you got to Istanbul?

7 A. Yes.

8 Q. What did you say and what did he say in those
9 conversations?

10 A. Basically how was your trip. He also talked to Chuka and
11 the other guys that were there, and he was supposed to see if
12 they would be able to give me the drugs.

13 Q. What happened next?

14 A. Well, they asked me if I had some money. I went and did a
15 Western Union withdrawal for \$2,000 -- sorry, debit withdrawal
16 for \$2,000.

17 Q. Where was that withdrawal from?

18 A. My business checking account.

19 Q. What did you do with that money?

20 A. I gave it to Chuka.

21 Q. And why did you give him \$2,000?

22 A. The balance of the drugs.

23 Q. What happened after than point?

24 A. They started complaining and saying the person they had to
25 buy the drugs from to give it to me wasn't back yet.

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86JTORU1

Fomum-Tibah - direct

1 Q. How did things proceed from there?

2 A. I extended my trip a day later to wait for this person but
3 the person never came. Emmanuel thought it was because of the
4 whole situation they wasn't trusting me too much.

5 Q. Was that a conversation that you had with Emmanuel Oruche?

6 A. Yes.

7 Q. When was that, approximately?

8 A. Right before I extended my trip for one day.

9 Q. So while you were in Istanbul?

10 A. Yes.

11 Q. So after you extended your trip one day, what happened on
12 the next day?

13 A. They still did not bring the drugs. I left, but before
14 leaving Emmanuel said he was going to take care of the 2,000
15 balance, which before that Chuka had said that they were going
16 to find another transporter to bring me drugs or to bring the
17 drugs in that amount.

18 Q. And when you say to bring the drugs, you mean bring the
19 drugs back to the United States?

20 A. Yes.

21 Q. So did you take any drugs back with you on your second trip
22 to Istanbul?

23 A. No.

24 Q. What happened when you got back home from Istanbul from
25 your second trip?

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86JTORU1

Fomum-Tibah - direct

- 1 A. I came to the airport and I had to get another ticket for
2 Michigan. I met with Emmanuel at the airport and we went to
3 another terminal and I finally got a ticket and I flew to
4 Michigan.
5 Q. So where did you fly into from Istanbul?
6 A. I forgot which exact airport, I believe it was -- it was
7 Delta, JFK though, I don't know if it was Delta at that time
8 or --
9 Q. Then from JFK you flew back to Michigan?
10 A. Yes.
11 Q. What, if any, conversations did you have with Emmanuel
12 Oruche regarding this failed trip?
13 A. He was still disappointed because things had not changed.
14 He complained about the calls he was still getting. He didn't
15 know what he was going to do with Paul. He said he still owed
16 the people in Istanbul, and he said it's because of the whole
17 thing, when things like that start happening people are not as
18 trusting to give out drugs.
19 Q. Did you go back to Istanbul after that second time?
20 A. Yes, I did.
21 Q. When was that?
22 A. A month and a few weeks after.
23 Q. Do you remember what month specifically?
24 A. August.
25 Q. How did that trip come about?

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36JTORU1

Fomum-Tibah - direct

1 Q. Why did you go to Chicago to get that visa?

2 A. Because Michigan did not have an embassy for London.
3 Chicago was the closest thing.

4 Q. What happened when you got to Chicago?

5 A. I went upstairs and I needed an address in London where I
6 would be staying, and I called Emmanuel, he called a girl Ida,
7 his brother's -- the mother of his brother's son in London who
8 gave me her address on a three-way call to Emmanuel.

9 Q. So you had to provide where you would be staying in London
10 in order to get your visa?

11 A. Yes.

12 Q. Did you have to give any other information to get your
13 visa?

14 A. Yes, I needed to show some money, like a traveler's check.

15 Q. How did you do that?

16 A. I called Emmanuel and I told him about it. He said he
17 wasn't at the store but he was going to have Joe wire the money
18 by Western Union.

19 Q. And then what happened?

20 A. When I called -- Joseph Oluigbo called later, sorry, and he
21 told me that the money was sent, I should receive it as it has
22 been sent by Nicole Oruche, who is Manny's daughter.

23 Q. Do you know Nicole Oruche?

24 A. Yes, I do.

25 Q. How old was she at that time?

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86J70RU2

Fomum-Tibah - direct

625

- 1 uncomfortable. They called and Amika said it would be
2 preferable if I wore tight jeans. And when Manny also called
3 that morning I told him that I was uncomfortable but Amika had
4 told me to wear tight jeans, and he said if Amika said that,
5 then that's a good idea.
6 Q. Did you fly out of Istanbul?
7 A. Yes, I did.
8 Q. What happened when you got to the United States?
9 A. I got arrested at the airport.
10 Q. Can you specifically take us through what happened from
11 when you entered the airport.
12 A. Yes. When I got to the airport I gave them my passport,
13 and the guy looked at it, and he took me to a little room to
14 the side. In that room an agent asked me what I was doing in
15 Istanbul, and I told him I was going to by clothes for sale.
16 Q. Was that true?
17 A. No.
18 Q. Why did you tell him you went to buy clothes?
19 A. That was the story that Emmanuel said I was allowed to say,
20 and I was also given money to shop.
21 Q. After your arrest did you meet with prosecutors from the
22 United States attorney's office?
23 A. Yes, I did.
24 Q. How soon did you meet with them after your arrest?
25 A. Few weeks. Few weeks.

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86J70RU2

Fomum-Tibah - Direct

1 Q. Were you truthful with them?

2 A. No.

3 Q. What did you lie about?

4 A. A lot of things.

5 Q. Can you tell us specifically?

6 A. That I was raped to get the vaginal insert to fit. I lied
7 that I was coerced to go get the drugs. I don't remember all
8 of what I said.

9 Q. Why did you tell them that you were raped?

10 A. I was hoping they would feel sorry for me and let me go.

11 Q. Did you admit that you went to Istanbul three different
12 times to bring back drugs?

13 A. I admitted going to Istanbul three times, but I said I
14 didn't bring drugs the other first two times.

15 Q. Why did you lie about that?

16 A. Well, talking to Emmanuel, he said that they could only
17 charge me with what they found me with, and gave me the idea
18 that I would get in more trouble if I mentioned the other
19 times.

20 Q. Did you finally admit to the U.S. attorney's office that
21 you lied?

22 A. Yes, I did.

23 Q. And what did you tell them?

24 A. The true story that --

25 MR. CERESNEY: Can we get a time frame, your Honor?

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86J70RU2

Fomum-Tibah - direct

- 1 A. Yes.
2 Q. And you said before that you gave the drugs to Emmanuel,
3 right?
4 A. Yes.
5 Q. Where were you specifically in the apartment when you gave
6 the drugs to Emmanuel?
7 A. In Emmanuel's room.
8 Q. And where was Joe when you were giving drugs to Emmanuel?
9 A. In the living room.
10 Q. Now, you said you lied to the government in your proffer
11 sessions with them, correct?
12 A. Yes.
13 Q. Were you truthful to the government about Emmanuel Oruche's
14 full involvement in your proffer sessions at first?
15 A. At that time I was mostly concerned about feeling sorry for
16 me and letting me go, so I don't remember how much I told them
17 about Emmanuel.
18 Q. Did you tell them about Emmanuel's involvement in your
19 first trip to Istanbul?
20 A. I think so. I am not quite sure.
21 Q. Did you admit to bringing back drugs on that first trip?
22 A. No.
23 Q. Did you admit to giving drugs to Emmanuel on that first
24 trip?
25 A. No.

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86J70RU4

Fomum-Tibah - cross

1 Q. How about somebody named Leroy? Did you also talk to them
2 about criminal conduct by somebody named Leroy during this
3 meeting, right?

4 A. I might have, yeah.

5 Q. Ms. Fomum-Tibah, at this April 25, 2007 meeting, after four
6 months of thinking about additional information, in the sixth
7 proffer with the government you did not mention Mr. Oluigbo a
8 single time, isn't that true?

9 A. I don't remember all that was said.

10 Q. Take a look, tab 17, a three-page document. Take your time
11 and tell me whether that refreshes your recollection that at
12 the April 25, 2007 proffer you did not mention Joseph Oluigbo a
13 single time.

14 A. It doesn't say his name.

15 THE COURT: Mr. Ceresney, is this an appropriate time
16 to recess?

17 MR. CERESNEY: A good time, your Honor.

18 THE COURT: All right. Members of the jury, we're
19 going to take our luncheon recess now. Keep an open mind and
20 come to no conclusions. Don't discuss the case among
21 yourselves or with anyone else. We're going to resume promptly
22 at 2:15.

23 Please recess the jury.

24 Ms. Fomum-Tibah, you may step down.

25 (Jury not present)

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86J70RU4

Fomum-Tibah - cross

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1 2, 2007 you had another proffer with the government?

2 A. Yes, sir.

3 Q. OK. So at that point you had proffers on September 7,
4 September 13, October 3, December 12, April 25 and now another
5 proffer July 2, right?

6 A. Yes, sir.

7 Q. It's your sixth proffer, right?

8 A. About that.

9 Q. And Mr. Oluigbo had been arrested by that point, hadn't he?
10 A. Yes, sir.

11 Q. You knew that it might be helpful to you to provide
12 information on Mr. Oluigbo, didn't you?

13 A. Yes, sir.

14 Q. And the government asked you some questions about Mr.
15 Oluigbo during that proffer, didn't they?

16 A. I don't remember.

17 Q. Do you have any recollection at all of the questions the
18 government asked you about Mr. Oluigbo during that proffer?

19 A. No, sir.

20 Q. Do you have any recollection sitting here today -- and I'm
21 looking for your best recollection -- of telling the government
22 anything about Mr. Oluigbo during that July 2nd proffer?

23 A. No, sir.

24 Q. Now, after that meeting the government told you they would
25 not sign you up to a cooperation agreement, right?

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86J7ORU4

Fomum-Tibah - cross

1 A. Yes, sir.

2 Q. You had now had six meetings with the government, right?

3 A. Yes, sir.

4 Q. You had spent hours and hours with them, correct?

5 A. Yes, sir.

6 Q. And you were still facing a pretty lengthy jail sentence,

7 correct?

8 A. Yes, sir.

9 Q. And you were still facing certain deportation, correct?

10 A. Yes, sir.

11 Q. And you had now been sitting in jail almost a year, hadn't

12 you?

13 A. Yes, sir.

14 Q. You were getting concerned, very concerned about the fact

15 that you didn't have a cooperation agreement yet, isn't that

16 right?

17 A. I had some concerns.

18 Q. You weren't concerned?

19 A. I had some concerns.

20 Q. OK. Let me just understand your answer. Were you very

21 concerned at that point?

22 A. Yes, sir.

23 Q. Can we agree you were desperate?

24 MR. ROSENSAFT: Objection, your Honor.

25 THE COURT: Sustained.

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86J70RU4

Fomum-Tibah - cross

705

1 Q. Were you desperate?

2 A. Yes.

3 Q. You wrote another letter to the government, didn't you?

4 A. Yes.

5 Q. A letter to Jessy Furman, the assistant United States
6 attorney, didn't you?

7 A. Yes.

8 Q. Let me show you 3501-16. Open up to tab 19 in your binder.
9 Sorry. 3501-6.

10 Can you take a look at that letter? Do you see the
11 second page, the signature on that letter?

12 A. Yes, sir.

13 Q. Is that your signature?

14 A. Yes, sir.

15 Q. Is that dated July 30, 2007?

16 A. Yes, sir.

17 Q. Is that 28 days after your proffer with the government?

18 A. Yes, sir.

19 MR. CERESNEY: Your Honor, I offer Defendant's Exhibit
20 3501-06 into evidence.

21 MR. ROSENSAFT: No objection for the limited purpose.

22 THE COURT: All right. Mr. Stolar?

23 MR. STOLAR: Certainly no objection here, Judge.

24 THE COURT: All right. Members of the jury, I'm going
25 to receive 3501-06 in evidence.

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86J70RU4

Fomum-Tibah - cross

- 1 A. Yes, sir.
2 Q. Now, the government had asked you questions about Joe
3 before, right?
4 A. Yes, sir.
5 Q. You couldn't remember that information before, is that what
6 you're saying in this letter?
7 A. Yes, sir.
8 Q. And finally in July of 2007, almost one year after your
9 arrest, you remembered information about Joe. Is that what you
10 were saying in this letter?
11 A. Repeat that question again.
12 Q. One year after your arrest, July 30, 2007, after six
13 proffers with the government, almost a year, you now remembered
14 information about Joe, correct?
15 A. Yes, sir.
16 Q. You had not remembered that information before, correct?
17 A. I don't think so.
18 Q. Now, you didn't just write Mr. Furman, isn't that right?
19 Did you write Mr. Trisone as well on the same day?
20 A. Trisone, yes.
21 Q. Have I been mispronouncing his name?
22 A. I don't know. That's what I know him to be.
23 Q. OK. Take a look at tab 20. Do you see that letter? Do
24 you see your name on tab 20, which is 3501-25?
25 A. Yes, sir.

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86JTORU5

Fomum-Tibah - cross

1 the government with information; correct?

2 A. Yes, sir.

3 Q. You knew at that time that Mr. Oluigbo had pled not guilty,
4 didn't you?

5 A. Yes, sir.

6 Q. You knew Mr. Oluigbo at that time was planning on going to
7 trial, didn't you?

8 A. I'm not quite sure.

9 Q. You had previously met with the government and provided
10 information about Mr. Oruche; correct?

11 A. Yes, sir.

12 Q. You had provided information on at least ten other people;
13 correct?

14 A. About that.

15 Q. You still hadn't gotten your cooperation agreement; right?

16 A. Yes, sir.

17 Q. And then for the first time in January 2008 in this
18 proffer, one and a half years after your arrest, you told the
19 government information about Mr. Oluigbo regarding some
20 conversations when you returned from Istanbul on your first
21 trip; correct?

22 A. I think so.

23 Q. And in fact in this meeting was the first time you told the
24 government anything about Mr. Oluigbo other than the fact that
25 he had once picked you up at the airport and that he was when

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721

86JTORU5

Fomum-Tibah - cross

1 Oruche's, quote, errand boy, unquote; correct?

2 A. I don't remember.

3 Q. Do you have any recollection, sitting here today -- again
4 I'm asking about events that were six months ago -- do you have
5 any recollection of ever telling the government prior to
6 January 14, 2008 anything about Mr. Oluigbo other than that he
7 drove you back from the airport on one occasion and that he was
8 Mr. Oruche's quote, unquote, errand boy?

9 A. No.

10 Q. You met with the government on a couple of other occasions
11 after that, didn't you?

12 A. Yes.

13 Q. And then May 6, 2008 you were presented with a cooperation
14 agreement; right?

15 A. Again the date.

16 Q. Take a look at tab 27 in the binder before you, I think
17 this was offered by the government, I believe it's Government
18 Exhibit 49 already in evidence. It's the cooperation
19 agreement. Take a look at the date on the top of the
20 cooperation agreement. May 6, 2008?

21 A. Yes, sir.

22 Q. Is that the date you got that cooperation agreement?

23 A. Yes, sir.

24 Q. That's about a month and a half ago; right?

25 A. Yes, sir.

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86JTORU5

Fomum-Tibah - cross

1 middle of the page and then close the binder, please.

2 MR. ROSENSAFT: Objection, your Honor, she hasn't
3 testified that she doesn't remember anything as of yet.

4 MR. CERESNEY: I asked her whether she recalled saying
5 that.

6 THE COURT: Overruled.

7 Q. You can close the binder. And this I think is a yes or no
8 question. Does that refresh your recollection that you told
9 the government three weeks ago that you had \$3,000 in Turkey,
10 not \$4,500?

11 A. By 3,000 I was --

12 Q. Yes or no.

13 THE COURT: You can answer the question yes or no. If
14 you can't answer the question yes or no tell that to
15 Mr. Ceresney and it will be up to him to decide how to proceed.

16 A. I can't answer that question yes or no.

17 Q. Okay. Let me move on. When you testified yesterday --
18 actually I think you testified earlier today that you had
19 previously, when you were first arrested, told the government
20 that you were raped on your last trip to Istanbul; correct?

21 A. Yes, sir.

22 Q. Tell us what you told the government about that rape on
23 September 7, 2006.

24 A. That it was so that my vaginal inserts would fit.

25 Q. You were raped so that vaginal inserts would fit, that's

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86JTORU5

Fomum-Tibah ~ cross

735

1 what you told the government?

2 A. Yes, sir.

3 Q. And you told the government that was after you had
4 swallowed the 83 pellets; right?

5 A. Yes, sir.

6 Q. That was a lie?

7 A. I think so.

8 Q. That was a lie, wasn't it?

9 A. Yes, sir.

10 Q. There was no rape, was there?

11 A. No.

12 Q. You also I think testified this morning about your second
13 trip to Istanbul, and I think you testified on this trip you
14 didn't try to swallow drugs; correct?

15 A. Yes, sir.

16 Q. Do you recall on September 7th, 2006 telling the government
17 that in fact you had tried to swallow drugs on this occasion?

18 A. I don't remember.

19 Q. Let me ask you to turn to tab 4, 3501-05. Direct your
20 attention to paragraph 23, read that paragraph and then close
21 your binder.

22 A. You said tab 4, paragraph 3?

23 Q. Paragraph 23. When you're done close the binder.

24 Does that refresh your recollection that on
25 September 7, 2006, in discussing the second trip to Istanbul,

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86NHORU1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

07 CR 124 (WHP)

EMMANUEL ORUCHE and JOSEPH
OLUIGBO,

Defendants.

New York, N.Y.
June 23, 2008
9:45 a.m.

Before:

HON. WILLIAM H. PAULEY III,

District Judge

APPEARANCES

MICHAEL J. GARCIA

United States Attorney for the
Southern District of New York

MICHAEL ROSENSAFT

VIRGINIA CHAVEZ ROMANO

Assistant United States Attorneys

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Attorneys for Defendant Joseph Oluigbo

ANDREW J. CERESNEY

ERIC MEYER

GORDON ENG

NEUMAN LEVERETT III

914

86NHORU3 Sy - direct

1 Q. Again, if you could just describe what is happening in this
2 picture in relation to your surveillance that day.

3 A. Yes. The subject in the multicolored shirt is entering
4 Emmanuel's vehicle with the bag.

5 Q. So this was after he had gone up to his room and come back
6 down with the bag?

7 A. Yes, it is.

8 MR. ROSENSAFT: Again if we could turn to the next
9 exhibit, Government Exhibit 42.5.

10 Q. And again, this is the individual entering the car?

11 A. Correct.

12 Q. Finally the last exhibit, Government Exhibit 42.6. Can you
13 describe what is happening in this exhibit as it relates to
14 your surveillance that day?

15 A. That is a few moments before they were leaving or departing
16 from the hotel.

17 Q. Emmanuel Oruche and the individual and his bag were all in
18 the car departing together, is that correct?

19 A. That is correct.

20 Q. Now let me take you forward a bit to February 28, 2007.

21 Were you assisting with this same investigation on
22 that day?

23 A. Yes, I was.

24 Q. What were you doing as part of the investigation on that
25 day?

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86NHORU3 Sy - direct

1 A. I was part of the arrest team of Joseph Oluigbo.

2 Q. Approximately when did you arrest him?

3 A. The early morning hours.

4 MR. ROSENSAFT: Can I have one moment, your Honor?

5 THE COURT: Take your time.

6 (Pause)

7 Q. I'm passing you what's been marked as Government Exhibit 48
8 for identification. Please take a look at that and tell me if
9 you recognize it.

10 A. Yes, I do.

11 Q. What do you recognize that to be?

12 A. Joseph Oluigbo's cell phone.

13 Q. How do you recognize that?

14 A. I recognize it because of the Playboy bunny insignia on the
15 cover.

16 Q. Have you seen that phone before?

17 A. Yes, I have.

18 Q. When did you see it before?

19 A. Inside of Joseph Oluigbo's residence on the date of arrest.

20 Q. What happened to that phone on the date of arrest?

21 A. I received it from either his girlfriend or his wife Martha
22 Enyioko, I believe is her name.

23 MR. ROSENSAFT: Your Honor, the government would offer
24 Government Exhibit 49 into evidence.

25 THE COURT: Any objection? Mr. Stolar.

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86NHORU3 Sy - direct

1 MR. STOLAR: I'm not sure I have standing, but no.

2 THE COURT: Every defendant has standing on any

3 exhibit.

4 Mr. Meyer.

5 MR. MEYER: No objection.

6 THE COURT: All right. Government Exhibit 49 is

7 received in evidence.

8 MR. ROSENSAFT: Your Honor, I misspoke. Your Honor,
9 it is Government Exhibit 48.

10 THE COURT: Government Exhibit 48 is received in
11 evidence.

12 (Government Exhibit 48 received in evidence)

13 MR. ROSENSAFT: Your Honor, I would like to publish it
14 to the jury.

15 THE COURT: You may.

16 Q. Now, what did you do with that phone after you seized it?

17 A. Special Agent Jeffrey Senn and myself brought it back to
18 our office and we looked at the phone numbers and took note of
19 it.

20 Q. What did you find when you looked at the phone numbers?

21 MR. STOLAR: Objection.

22 THE COURT: Overruled.

23 A. Many phone numbers, the most recent contacts, like a phone
24 book list inside.

25 Q. I am passing you what's been previously marked as

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86NHORU3 Sy - direct

1 Government Exhibits 48.1P through 48.5P.

2 Can you tell me if you recognize those exhibits.

3 A. Yes, I do.

4 Q. How do you recognize them?

5 A. By the names.

6 Q. Had you seen those pictures before?

7 A. Yes, I have.

8 Q. What do you recognize them to be?

9 A. The names and phone numbers inside of Joseph Oluigbo's
10 phone.

11 Q. Are those fair and accurate depictions of some of the phone
12 numbers and names that you saw in Joseph Oluigbo's phone?

13 A. Yes.

14 MR. ROSENSAFT: Your Honor, the government would move
15 Government Exhibits 48.1P through 48.5P into evidence.

16 THE COURT: Any objection?

17 MR. STOLAR: Can I take a brief voir dire, Judge?

18 THE COURT: Go ahead.

19 VOIR DIRE EXAMINATION

20 BY MR. STOLAR:

21 Q. Are the photos that we see pictures from his address book
22 or from recent calls?

23 A. I'm not certain.

24 Q. Are they of the address book or are they recent calls?

25 A. They appear to be more of the recent calls.

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86NHORU3 Sy - direct

1 Q. These five entries that you have here represent five out of
2 how many entries?

3 A. Of recent calls you mean?

4 Q. Recent calls or address books.

5 A. I don't know the exact number.

6 Q. Lots of them, right?

7 A. Yes.

8 MR. STOLAR: I have no objection, Judge.

9 THE COURT: Any objection, Mr. Meyer?

10 MR. MEYER: No objection, your Honor.

11 THE COURT: All right. Government Exhibits 48.1P
12 through 48.5P are received in evidence.

13 (Government's Exhibits 48.1P through 48.5P received in
14 evidence)

15 BY MR. ROSENSAFT:

16 Q. Agent Sy, I know you testified that you both looked at
17 recent calls and in the address book, but these five
18 specifically in the photographs here, are these from the
19 address book?

20 A. Yes, as well as were in the address book.

21 Q. So these aren't the recent calls that you saw?

22 A. They were on the address book, the same numbers.

23 MR. ROSENSAFT: Your Honor, I would like to publish
24 Government Exhibits 48.1P through 48.5P to the jury.

25 THE COURT: You may proceed, Mr. Rosensaft.

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86NHORU3 Sy - direct

1 Q. Now first up on the elmo is Government Exhibit 48.1P. As
2 each one comes up, can you just tell us what that contact is
3 that you found.

4 A. Yes. That's Becky's phone number.

5 Q. And what phone number is listed?

6 A. 313-461-8050.

7 Q. And do you know what it means, speed No. 35? Do you know
8 what that means?

9 A. That may indicate the number, the contact number on the
10 phone list.

11 (Continued on next page)
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86N7ORU4

Sy - direct

- 1 BY MR. ROSENSAFT:
2 Q. If we could go to the next exhibit, Government Exhibit
3 48.2P. Again, if you could just tell us what is the contact
4 here that you found?
5 A. Emmanuel Oruche, 646-533-8587.
6 Q. Now again if we could go to Government Exhibit 48.3P.
7 Agent Sy, if you could again read what contact this is?
8 A. Emma, 832-613-4067.
9 Q. If we could go to Government Exhibit 48.4P. If you could
10 please read what this exhibit is a contact of.
11 A. Emmanuel O, 646-462-2737.
12 Q. Finally if we could turn to Government Exhibit 48.5P, Agent
13 Sy, if you could again just read what that exhibit is a number
14 of from the contact list?
15 A. Emmanuel Oruche, 347-275-1140.
16 Q. So, if I am looking at the exhibits correctly, there were
17 four different contacts you found for Emmanuel Oruche, is that
18 correct?
19 A. That's correct.
20 Q. Finally, Agent Sy, as part of your investigation did you go
21 to the address 3678 White Plains Road?
22 A. Yes, I did.
23 Q. And what did you find at that address?
24 A. Starlight Beauty Salon.

25 MR. ROSENSAFT: May I have one moment, your Honor?

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86N70RU4 Sy - cross

1 MR. STOLAR: Yes. Sorry, Judge.

2 THE COURT: All right. Cross-examination, Mr. Meyer.

3 CROSS EXAMINATION

4 BY MR. MEYER:

5 Q. Good afternoon, Special Agent Sy.

6 A. Good afternoon.

7 Q. You only showed us five entries from Mr. Oluigbo's contact
8 information, didn't you?

9 A. Yes, that's what we have here.

10 Q. And there are actually 68 entries in his contact list,
11 weren't there?

12 A. There were a lot. I don't know the exact number.

13 Q. I am going to show you what's marked as Defendant's Exhibit
14 3502-7 for identification. Take a look at that. Do you
15 recognize that?

16 A. Yes, I do.

17 Q. And take a look at that. Does that refresh your
18 recollection that there were 68 entries in Mr. Oluigbo's
19 contact list on this phone?

20 A. Yes.

21 Q. Now, the entries that you did show, you can't tell how
22 often each of those numbers was called, can you?

23 A. No.

24 Q. And when you were looking at Mr. Oluigbo's phone, you did
25 not find the phone number 917-815-6747, isn't that right?

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86N7ORU4 Sy - cross

1 A. That's correct, I don't see it on here.

2 Q. And lastly, Special Agent Sy, when did you go to the
3 Starlight Beauty Salon?

4 A. This morning.

5 MR. MEYER: Thank you. Nothing further.

6 THE COURT: Redirect examination?

7 MR. ROSENSAFT: One moment, your Honor.

8 THE COURT: Sure.

9 MR. ROSENSAFT: Very briefly, your Honor.

10 REDIRECT EXAMINATION

11 BY MR. ROSENSAFT:

12 Q. Agent Sy, of the 68 entries in the phone, do you remember
13 there being an entry for a Leroy?

14 MR. MEYER: Objection.

15 THE COURT: Overruled.

16 Q. Without looking at that first, do you remember if there was
17 an entry?

18 A. I don't.

19 Q. Could you use that to refresh your recollection? Look over
20 and tell me if that refreshes your recollection as to whether
21 there was a Leroy.

22 A. Yes, there is, number 43.

23 Q. And if you could now close that again. Do you remember
24 looking through the phone if there was a contact for an Eva
25 Tchakpana?

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86N7ORU4

1 Mr. Wagabono was in possession of heroin. There is no evidence
2 to show that. There is no phone call setting anything up.
3 There is no rush of him getting over there. There is nothing
4 said on the telephone about heroin. So, the government's
5 obligation to prove essentially knowledge and intent to violate
6 the narcotics laws, there is a disconnect.

7 The agents have somebody who is in custody with
8 heroin, there is contact with Mr. Oruche. Mere association is
9 insufficient. There is nothing that places any kind of mental
10 state, even by circumstantial evidence, into Mr. Oruche's head.
11 Therefore, the government's proof in connection with Counts One
12 and Two fails, not so much that they didn't discover heroin,
13 but they failed to connect Mr. Oruche to that heroin. We
14 played lots of phone calls. He wasn't anxious to get over
15 there. Nothing was said about the heroin. Nothing was said
16 about suitcases. So, where is the government's proof of
17 knowledge and intent with respect to Counts One and Two? I
18 suggest it's not there.

19 MR. CERESNEY: Your Honor, I have a similar
20 application, although different grounds with regard to Mr.
21 Oluigbo, in particular Rule 29, failure of the government to
22 provide sufficient evidence beyond a reasonable doubt.

23 For Mr. Oluigbo I think actually focused on the 2006
conduct, there is a viable motion here, your Honor. First,
with regard to Ms. Fomum-Tibah, I think we can all agree that

86N7ORU4

1 the government's case rests on two basic foundations:
2 Ms. Fomum-Tibah's testimony, and the tape recordings.

3 Just addressing Ms Fomum-Tibah first, the first point
4 I think is that given the testimony here over the past few
5 days, I think it's clear that her testimony cannot be believed
6 beyond a reasonable doubt, and that no reasonable juror could
7 believe it beyond a reasonable doubt.

8 However, even if you were to credit what she says
9 about Mr. Oluigbo, and if you were to credit the things that
10 she said she observed him doing, we would argue, your Honor,
11 that that doesn't prove knowing participation in a conspiracy.

12 She argued that he was present to pick her up at the
13 airport. She stated that on occasion he made travel
14 arrangements for her. Those were perfectly innocent acts,
15 nothing to connect him up with a conspiracy.

16 When the drugs were allegedly brought and unpacked in
17 the apartment, she testified that Mr. Oluigbo was in the living
18 room, when Mr. Oruche and Ms. Fomum-Tibah were looking at the
19 drugs in the bedroom. So, he is not even in the room with the
20 drugs.

21 So, I would submit, your Honor, even with regard to
22 her testimony, even if it's credited -- which I don't think any
3 reasonable juror can beyond a reasonable doubt -- it does not
4 show participation in the conspiracy.

5 On the tapes, your Honor, you know I think you have

86N70RU4

1 been here to see the tapes. Again, eight tapes, all of them
2 essentially show innocent acts by my client, none of them have
3 sufficient evidence to show his knowing participation in any
4 conspiracy to import or to traffic in heroin, things like going
5 down to the block to a restaurant where he didn't meet anybody
6 ultimately, things like going and meeting someone, taking them
7 to the airport, those are all innocent acts, Mr. Oluigbo being
8 an employee of Nicobi are certainly not sufficient for a
9 reasonable juror to find beyond a reasonable doubt.

10 Finally I would note -- and Mr. Stolar mentioned this
11 at sidebar, but I think it's an additional point here on Rule
12 29 -- the evidence is even insufficient to find that Mr. Jemy
13 was actually a courier. I think what we saw here in the
14 evidence was really nothing to demonstrate that he in fact had
15 narcotics, separate and apart from anything else he might have
16 had. And certainly on those tapes there is insufficient
17 evidence to show that.

18 So, for those reasons we believe a judgment of
19 acquittal is appropriate under Rule 29.

20 THE COURT: Thank you, Mr. Ceresney.

21 Mr. Rosensaft?

22 MR. ROSENSAFT: Thank you, your Honor. Let me address
23 each of those separately.

24 First with regards to Counts One and Two, the December
25 2003 conduct. I think there is ample evidence for a jury to

86N7ORU4

1 of things.

2 Number two, the \$2,000 that was in the Western Union,
3 and the efforts to conceal that the government just mentioned,
4 even if there were any efforts to conceal -- which I would not
5 concede there were -- that doesn't amount to a knowledge of
6 joining a heroin conspiracy. I think that's a heck of a leap.

7 Three, the same holds true with regard to if somebody
8 is being followed by the police, saying somebody who is your
9 friend, telling them to stop and let the police go past you, I
10 think it's fair to say that doesn't make you a member of a
11 heroin conspiracy. So that's our response on those points.

12 THE COURT: All right. Counsel, decision on the Rule
13 29 motions is reserved. We will take five minutes. Then we
14 will bring the jury out. I will ask you in the presence of the
15 jury whether you wish to present any evidence on behalf of the
16 defendant Emmanuel Oruche. We will proceed from there. All
17 right?

18 my law clerk will distribute to you drafts of the
19 charge. I emphasize that they are still a draft, a work in
20 progress, and we will talk about it after we complete the
21 evidence today. All right. We will take a few minutes.

22 (Recess)

23 THE COURT: All right. We will bring out the jury.
24 Question for you. Has the government had an opportunity to
25 inquire of Ms. Fomum-Tibah concerning a diary?

86NHORU5

1 (Jury not present)

2 THE COURT: Mr. Stolar.

3 MR. STOLAR: At the close of all the evidence I would
4 like to renew the Rule 29 motion that was made previously based
5 on the arguments that I made before the close of all the
6 evidence.

7 MR. CERESNEY: Your Honor, I would also like to renew
8 our motion on behalf of defendant Joseph Oluigbo.

9 THE COURT: All right. Decision reserved.

10 Now, I have distributed a draft copy of the charge.
11 Let me just give you a quick precis of how it differs in what
12 the parties proposed.

13 With respect to, and taking the parties' joint request
14 to charge, with respect to request No. 2, I have added
15 Mr. Oluigbo's request to add proof of guilt and I have deleted
16 the sentence that I will not read the entire indictment.

17 In request No. 3, I have conformed it to the four
18 counts that have been tried in this case. So I have eliminated
19 references to the fifth count.

20 In request No. 4, I have included defendant Oluigbo's
21 changes to the first paragraph, but I did not include defendant
22 Oluigbo's requested changes in the second and third paragraph.

23 In request No. 5 --

24 MR. STOLAR: Judge, in request No. 4, did you take the
25 word innocence out?

1027

86OHORU2 Summation - Mr. Rosensaft

1 dressed in black and carrying a bag, the way our people carry
2 bag.

3 What is Emmanuel Oruche telling Joseph Oluigbo in this
4 call? He is telling him to go see if Jemy is there and that
5 Jemy is carrying a bag the way our people carry bag.

6 So let me go through these again. Emmanuel Oruche and
7 the man from Nigeria first talk, they set up this elaborate
8 process for how to meet Jemy, because, as Emmanuel Oruche says,
9 you have to be careful in this country. And then they send
10 Jemy to Aziza Restaurant, where Emmanuel Oruche sends Joseph
11 Oluigbo to go check him out, and find the man that is carrying
12 a bag the way our people carry bag.

13 Now Joseph Oluigbo does go and check out to see if
14 Jemy is there, and we know that from the next call, because he
15 reports back to Emmanuel Oruche and says he didn't see anyone
16 there. And then Emmanuel Oruche calls the man from Nigeria and
17 says it wasn't successful. We didn't meet Jemy in the
18 restaurant today, but I am going to try again tomorrow.

19 then there is a very interesting call, and this is
20 Government Exhibit 41T-9. If we could bring that one up on the
21 screen.

22 This is a fairly long call between Emmanuel Oruche,
23 Eva, his girlfriend, who is translating French -- and remember
24 Jemy has the French passport, speaks French -- and between Jemy
25 on that call.

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860HORU2 Summation - Mr. Rosensaft

1 then tried to send Joseph Oluigbo to find the guy who is
2 carrying bag the way our people carry bag. And then he talks
3 to Jemy on the phone and he wants to make sure he is not being
4 followed.

5 It is absolutely clear that Cosme Jemy is not a
6 relative coming from out of town. He is a drug courier, coming
7 in, bringing in drugs, for Emmanuel Oruche. And Emmanuel
8 Oruche is doing whatever he can to try to make sure that law
9 enforcement doesn't catch him.

10 Now if we could go to Government Exhibit 41T-10, there
11 is one last call with Eva that I wanting to through. Go to the
12 next page. One more.

13 Emmanuel Oruche calls Jemy again -- rather, calls Eva
14 again so that he can talk to Jemy in French and he says, Yeah,
15 Eva, could you tell, tell this guy that in the evening I will
16 come and pick him up and put him, let him stay with Joe. But I
17 have to talk to Joe. Let Joe know to stay in my house. OK?
18 That I will move him.

19 Now, what Joe is Emmanuel Oruche talking about? He is
20 talking about Joseph Oluigbo. We know that from the very next
21 call, because Emmanuel Oruche then calls Joseph Oluigbo and
22 says that there's a guy, and he talks about staying at Joe's
23 house. And Joseph Oluigbo says, oh, I have other people coming
24 in from Pennsylvania. And so Cosme Jemy doesn't ultimately
25 stay with Joseph Oluigbo.

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6/25/2008 ORUCHE TRANSCRIPT 7

1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK
2 -----x
2

3 UNITED STATES OF AMERICA,
3

4 v.
4

07 CR 124 (WHP)

5 EMMANUEL ORUCHE and JOSEPH
5 OLUIGBO,
6

6 Defendants.
7
7 -----x
8

8 New York, N.Y.
9
9 June 25, 2008
9 9:45 a.m.
10
10

11 Before:
11

12 HON. WILLIAM H. PAULEY III,
12

13 District Judge
13
14

14 APPEARANCES
15

15 MICHAEL J. GARCIA
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16 Southern District of New York
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23 ERIC MEYER
23

23 GORDON ENG
24

24 NEUMAN LEVERETT III
24
25

6/25/2008 ORUCHE TRANSCRIPT 7

1 called to that service. I am now going to relieve you of all
2 of the prohibitions I set on you up to the present time.

3 You are free to discuss the case with anyone you want,
4 or not to discuss it at all. I would only urge you in
5 discussing the case with anyone, that you observe the sanctity
6 of jury deliberations and that you speak only for yourself in
7 connection with the case.

8 I am going to discharge you now as jurors. Your jury
9 service is concluded; you are free to leave. For those of you
10 who can stay for a few minutes, I will come into the jury room
11 shortly and speak with you, but I understand completely if you
12 wish to leave the courthouse at this time.

13 Thank you so much.

14 Please recess the jury.

15 (Jury dismissed)

16 THE COURT: All right. Everyone may be seated.

17 I will fix a date for sentencing. At this time I will
18 set this matter down for sentencing on Friday, September 26,
19 2008 at 2:30.

20 Are there any further applications at this time?

21 MR. STOLAR: Judge, there is still the Rule 29 motions
22 that you reserved on, and if you want to consider, keep the
23 reserve on it and let us put in a written motion for a new
24 trial, which would be essentially the same as under Rule 29 as
25 you sitting as the 13th juror, and extend the time that we

6/25/2008 ORUCHE TRANSCRIPT 7

1 could get that in to you beyond ten days, then I would
2 appreciate it.

3 THE COURT: Does the defendant Oluigbo have any
4 applications?

5 MR. CERESNEY: The same, your Honor.

6 THE COURT: All right. When do you want to submit
7 your motion?

8 MR. STOLAR: How about on or before July 9?

9 THE COURT: Is that date acceptable to defendant
10 Oluigbo?

11 MR. CERESNEY: If we could have one more week beyond
12 that, that would be better.

13 MR. STOLAR: I'm going on vacation that week, but
14 that's all right.

15 THE COURT: I will fix July 16 as the last day for the
16 defendants to file any motions for a new trial.

17 I only caution counsel that in the court fixing this
18 date, this court does not bind the Court of Appeals. Be
19 mindful of all time limits with respect to motions for new
20 trials.

21 Are there any other matters that counsel wish to
22 raise?

23 MR. ROSENSAFT: Nothing from the government, your
24 Honor.

25 MR. STOLAR: I can't think of anything else.